IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20368 of 2004

Between:

P. Nanda Kumar, S/o. P.V. Subbaiah,
R/o. Rly.Qtrs. No.102/B, Gudur, Nellore District.

..... PETITIONER

AND

1 **The Chief Security Commissioner, Railway Protection Force, South Central Railway, Rail Nilayam, Secunderabad.**
2 **Sr. Divisional Security Commissioner, Railway Protection Force, Sourth Central Railway, Vijayawada.**

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the first Respondent in rejecting the promotion of the petitioner to the post of Sub-Inspector protection Force under Restructuring Scheme vide proceeding No.X/P.529/2/IX, Dt. 15.6.2004 is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and consequently direct the Respondents to promote the Petitioner to the post of Sub Inspector Protection for under the Restructuring Scheme as per the Notification No.B/XP.529/SIPF, Dt. 5.2.2004 with all monetary benefits including seniority pay fixation etc.

Counsel for the Petitioner: MR.J.M.NAIDU

Counsel for the Respondents: MR.A.KRISHNAM RAJU

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 20368 of 2004

O R D E R:

Challenging the action of the 1st respondent in rejecting the promotion of the petitioner to the post of Sub-Inspector Protection Force under restructuring scheme vide Proc.No.X/P.529/2/IX dated 18.6.2004 as illegal and arbitrary, the present writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was initially appointed as RPF Rakshak on 19.7.1977 and was promoted as S.R.K. (Naik) in the year 1988 and was further promoted as Head Constable in the year 1992 and as Asst. Sub-Inspector in the year 1994. The Railway Board has issued proceedings dated 19.11.2003 directing all the concerned to implement the restructuring orders in all Group-C and Group-D cadres of RPF and RPSF. In pursuance of the said orders, the 2nd respondent issued proceedings dated 5.2.2004 mentioning the eligible candidates for restructuring benefits from the post of ASIsPF to Sub-Inspector Protection Force in which the petitioner's name is found at Sl.No.15. While he was working at Gudur, he was medically found unfit for B1 and BII, but found fit in CI category. Therefore the 2nd respondent advised the D.R.M to provide any suitable vacancy to the petitioner in order to absorb in alternative job. As the respondents have not found any suitable alternative post to the petitioner he was continued in the supernumerary post of ASI till date. Thereafter he made representation dated 12.6.2004 to the 2nd respondent requesting to promote him to the post of SI/RPF under restructuring quota as no establishment can deny promotion to the employee on

the ground of his disability as per Section 47(2) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the Act'). The said Act was adopted by the Railway Board in pursuance of the proceedings dated 29.4.1999. By the impugned proceedings the case of the petitioner was rejected. Hence the present writ petition.

The respondents filed counter stating that the promotion is not a matter of right and any employee can claim only for consideration for promotion subject to his eligibility as per the rules. The petitioner was medically decategorised on 16.2.2004 and the same was not questioned by him and the same is implemented by creating supernumerary post till he is absorbed in alternative post in the same scale. Therefore, he cannot be considered for promotion to the post of Sub-Inspector under restructuring scheme which came into effect from 1.7.2004. To implement the Railway Board's instructions, the willingness of the eligible candidates has been called for. The petitioner submitted his willingness to the 2nd respondent to appear for the test on 19.2.2004, but prior to that date he has been found unfit. Therefore, he became ineligible for the test of Sub-Inspector. The Indian Railway Medical Manual prescribed medical fitness required for holding the various posts in RPF. In order to hold the post in RPF it is imperative that the person has to be classified as BI category and otherwise he cannot be continued as a member of RPF. The request of the petitioner had not been considered on the ground of his medical decategorisation before the date of selection. In pursuance of the guidelines issued by the Railway Board the petitioner had been accommodated in a created supernumerary post and allowed to draw the same pay. He was allowed to do the sedentary duties only as recommended by the medical authorities. The benefit of Section 47 of the Act 1995 would be extended to the petitioner after his absorption in the alternative post. He would be in the channel of promotion in the cadre, where he will be absorbed in the other departments. Hence the respondents pray to dismiss the writ petition.

Learned counsel for the petitioner contended that the petitioner's name was found at Sl.No.15 of the list prepared by the Senior Divisional Security Commissioner, R.P.F., Vijayawada as eligible for promotion for Sub-Inspector Protection Force but he was denied promotion on the ground that he was found medically unfit and as per Section 47 of the Act 1995, he is entitled for promotion and no promotion shall be denied to a person merely on the ground of disability and hence he prays to allow the writ petition directing the respondents to give promotion to the post of Sub-Inspector.

On the other hand, learned standing counsel for the respondents contended that the petitioner was not on the rolls of R.P.F. by the date of selection. As he was medically unfit and the selection to the post was held on 19.2.2004 whereas he was found unfit for R.P.F. itself w.e.f. 16.2.2004 and the Sub-Inspector Protection Force is a selection post, the petitioner cannot claim any right for promotion.

With a view to strengthen and rationalize the staffing pattern in the Railway Protection Force, a review was undertaken by the Railway Board on the basis of functional, operational and administrative requirements with regard to restructuring of the cadres with reference to the sanctioned cadre strength as on 1.11.2003. The Railway Board issued the proceedings No. PC-III/2000/CRC/I(RPF/RPSF) dated 19.11.2003 giving instructions to the concerned authorities to implement the cadres strictly and carefully as contained therein. There is no dispute about issuing of restructuring orders. It is also not disputed before this court that the petitioner is one among the 31 candidates called for written test for Sub-Inspector Protection Force Selection (Executive Branch) to be held on 19.2.2004 at 0900 hours. Thereafter it seems he was not allowed to participate in the written test since he was medically decategorised and declared unfit w.e.f. 16.2.2004. It is also not disputed before this court that under Section 69 of the Railway Protection Force Rules 1997 promotion of member of a post up to the rank of Commandant shall be made on the basis of merit having due

regard to seniority. It is not disputed before this court that the petitioner was found medically decategorised and declared unfit for BI and BII categories of posts whereas he was fit for CI category. The medical certificate issued vide Certificate No.132 dated 16.2.2004 by the Chief Medical Superintendent, Vijayawada is not under challenge. In pursuance of that medical certificate issued by the Chief Medical Superintendent, the 2nd respondent advised all the Divisional Railway Managers to provide any suitable vacancy to the petitioner to absorb in alternative job vide proceedings dated 10.3.2004.

Promotion from the post of A.S.I. to the post of Sub-Inspector Protection Force is not a matter of course or seniority. Merit is the basis for promotion with due regard to seniority. Therefore, the promotion can be said to be on the basis of merit-cum-seniority. Perhaps that is the reason why the respondents prepared a list of candidates who are eligible for promotion to the Sub-Inspector Protection Force and required to appear for the written test to be held on 19.2.2004. The name of the petitioner admittedly found at Sl.No. 15. This does not confer any right on the petitioner. This list is only eligibility list prepared by the Sr. Divisional Security Commissioner, R.P.F., Vijayawada on 5.2.2004. In pursuance of this list, the eligible candidates appeared in this list are required to pass the test and thereafter they are subjected to interview by the departmental promotion committee as required under Rule 70 of the Railway Protection Force Rules, 1997. The petitioner was not allowed to appear for the selection test held on 19.2.2004 on the ground that few days before the selection test he was found medically unfit as per the medical certificate issued by the Chief Medical Superintendent on 16.2.2004. The right of promotion to the post can only be interfered when the respondents violated any of the provisions which govern the service conditions of the petitioner. The action of the respondents in not allowing the petitioner to participate in the written test is not under challenge. Unless he passes through the selection test, he is not eligible for consideration of promotion to the higher post by the departmental promotion committee. Therefore, the right of the

petitioner if any has not been infringed or violated by the respondents. The impugned proceedings dated 16.6.2004 would go to show that as on the date of selection the petitioner was not on the rolls of R.P.F. as the Sub-Inspector Protection Force is a selection post and he was unfit for R.P.F. duties w.e.f. 16.2.2004.

Learned counsel for the petitioner placed reliance on the restructuring proceedings dated 19.11.2003 but the said proceedings were superseded by proceedings dated 15.9.2004 issued by the Railway Board. The date of effect for restructuring in respect of Artisan and Ancillary categories of RPF/RPSF (non-combatised) will be 1.11.2003 and the date of effect for restructuring in respect of combatised staff of RPF/RPSF will be 1.7.2004. Therefore, the petitioner cannot now claim promotion to the post of Sub-Inspector Protection Force since the post to Sub-Inspector Protection Force is on the basis of merit-cum-seniority list.

With regard to providing alternative job, a special supernumerary post is created for the petitioner after obtaining necessary approval. Under Section 47(2) of the Act 1995, no promotion shall be denied to a person merely on the ground of his disability. It is no doubt true that the Railway Board vide its proceedings dated 29.4.1999 directed the authorities concerned to extend the benefits under Section 47 of the Act 1995 to the petitioner. Therefore the respondents are bound by Section 47(2) of the Act 1995. The only basis on which the petitioner was found unfit is the medical certificate issued by the Chief Medical Superintendent, Vijayawada. Therefore, the order under challenge is unsustainable. The action of the respondents is contrary to Section 47(2) of the Act 1995. His name was not included in the departmental promotion committee selection held on 19.2.2004 only on the ground of certificate dated 16.2.2004 issued by the Chief Medical Superintendent, Vijayawada.

Therefore, the impugned proceedings suffers from

incurable legal infirmities. Hence the impugned proceedings dated 16.6.2004 is set aside and the matter is remitted to the 1st respondent-Chief Security Commissioner with a direction to place the matter before the next departmental promotion committee for promotion as Sub-Inspector without adverting to the medical certificate No.132 dated 16.2.2004 issued by the Chief Medical Superintendent, Vijayawada. Thereafter, the departmental promotion committee shall have to consider the promotion of the petitioner as Sub-Inspector and if the petitioner is found suitable for selection as Sub-Inspector, he shall be shifted to some other post with the same pay-scale and service benefits as required under Section 47 of the Act 1995.

The writ petition is disposed of remitting the matter as directed above. No costs.

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K.C. Bhanu, J.

Date: --01—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chief Security Commissioner, Railway Protection Force, South Central Railway, Rail Nilayam, Secunderabad.

2 Sr. Divisional Security Commissioner, Railway Protection Force, Sourth Central Railway, Vijayawada.

3. 2CD copies.